receive it back, and the passage is mandatory: "the postmaster" applied to "*shall* telegraph a request." "On receipt of such request the postmaster at the office of address *shall* return such letter to the mailing postmaster, . . . who will deliver it to the writer upon payment of all expenses." (For mention of a decision on these sections, see the American Lawyer, November, 1893, p. 8.) The result of this conflict of law and postal regulations is that the original proposer of a contract is bound from the time of acceptance; the acceptor is not bound in practice until his letter has been delivered. He may be bound in law, but if he gets his letter back and burns it up, he cannot be held in court. So for one party to the contract we have one rule, for the other the other. It may be urged that in fact men do not descend to such tricks as this. Most men do not; but it is the unscrupulous men seeking to avoid their liabilities who test the weak points of the law. Probably it is true that in a great majority of the cases the common rule does no harm; perhaps it is in those cases slightly for the convenience of those who deal through the mails. It does, however, do injustice, gross injustice, in such cases as *Vassar* v. *Camp*, 11 N. Y. 441, and it could be used to do great injustice by virtue of these postal regulations. The Massachusetts rule (*McCulloch* v. *Eagle Insurance Co.*, 1 Pick. 283) is tenable without assumptions incompatible with the lack of agency in fact, and does not do injustice. When the two rules come up to be argued upon the question of expediency, we shall get some light upon their practical convenience; but until then the law will rest on these two premises: that the sender renounces control over the letter, and that the Post Office acts as the agent of the proposer of the contract, each rendered untenable by the assertion and practice of the contrary by the Post Office.

The English cases are in Mr. Innes's article; the American are in Bennett's Benjamin on Sales (1892), pp. 65 ff.; and see Professor Langdell's article in 7 Am. L. Rev. 432; also *Patrick* v. *Bowman*, 149 U. S. 411.

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LAIDLAW *v.* SAGE. — The case of *Laidlaw* v. *Sage*, which has just been decided by the Supreme Court of New York (New York Law Journal, vol. x. No. 44), arose upon a very extraordinary state of facts, and the opinion of the court (Van Brunt, P. J.) is suggestive in regard to more than one point.

The facts appearing upon the trial below were substantially these:

The plaintiff was a clerk who had called to transact business with Mr. Russell Sage. He was standing in Mr. Sage's office, waiting until Mr. Sage should finish talking with another caller who was then engaging his attention. This man, whose name was Norcross, had just handed Mr. Sage a letter, in which he threatened to drop a satchel full of dynamite, which he carried, on the floor, and so blow up the building, unless Mr. Sage would immediately give him $1,200,000. Mr. Sage, after reading the letter, answered Norcross evasively, and at the same time, according to the plaintiff's story, approached the plaintiff, and gently laying hold of him in such a manner as not to excite his suspicion, drew him into a position between himself and the dangerous visitor. Thereupon Norcross dropped his satchel. An explosion followed, by which the plaintiff was very seriously injured. This suit was brought to recover for these injuries, which the plaintiff claimed had been sustained in consequence of Mr. Sage's wrongful act.

A motion to dismiss was granted by the Circuit Court, on the ground that there was no evidence to support the action. The Supreme Court reversed this judgment, and ordered a new trial. The language of the opinion of the Supreme Court is not very precise, but the result reached seems clearly right. It would have been at least possible for a jury, acting within the bounds of reason, to find that the defendant, fearing that Norcross would execute his threat, deliberately pulled the plaintiff in front of him in order to protect his body. If this was the truth, the defendant's act was wrongful; and certainly it could not be said, as matter of law, not to be a proximate cause of the plaintiff's injury. And this is apparently what the court means in saying that "there is no question of proximate cause." On the ground, therefore, that the evidence raised a question for the jury, the Supreme Court did only common justice to the plaintiff in reversing the decision of the court below.

The court, however, is not content to let the matter rest here. There follows a discussion of the "burden of proof" in such cases as the present which seems not wholly satisfactory. Under the circumstances of the case, the court says, "The burden is thrown upon the defendant of establishing that his wrongful act did not in the slightest degree contribute to any part of the injury which the plaintiff sustained by reason of the explosion." Here is certainly some confusion. If the court means that the jury might fairly assume from the facts in evidence, without more, that the defendant's act was in a legal sense a cause of the plaintiff's injury, and that therefore the duty of going forward with evidence might lie on the defendant, this is no more than is involved in reversing the judgment of the lower court and in what has been already said. But if the court means to lay down as a rule of law any doctrine to the effect that under the circumstances of cases like the present the jury *must* find for the plaintiff, unless the defendant can show affirmatively that his act "did not in the slightest degree contribute to any part of the injury which the plaintiff sustained," then surely the court is laying down new law. The court says, "The whole ground-work of the respondent's argument is that the motion to dismiss was properly granted because it was incumbent upon the plaintiff to establish that, without Sage's act, he would not have been injured; thus completely turning around the question as to the burden of proof." Here both words and context seem to indicate clearly that the meaning of "burden of proof" which the court has in mind is the burden of establishing an affirmative case. The result is that the plaintiff is relieved from the necessity of establishing affirmatively that his injury was in a legal sense the outcome of the defendant's misconduct, because the defendant's act was a wrongful one at best. Probably, however, the court does not mean to assert any such doctrine. What was said was said by the way, and rather hastily; if the point had been material to the case, it would doubtless have been more carefully considered.

Another interesting question is likely to arise at the next trial. The defendant will probably advance the theory that his act was instinctive, and ask for an instruction to the jury that if his action was involuntary and such as would instinctively result from a sudden and irresistible impulse to escape a terrible danger, he is not liable to the plaintiff for the consequences of it. Upon the principle advanced in the celebrated Squib Case and such cases as *Griggs* v. *Fleckenstein*, 14 Minn. 81, it is difficult to see how such an instruction could be refused. It may well

be doubted, however, whether the facts as we have them do not show a rapid exercise of the reasoning faculty, rather than purely impulsive action.

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LIABILITY FOR "NERVOUS SHOCK." — A clear and well-considered opinion on the subject of liability for physical injuries ensuing upon "nervous shock," or fright caused by negligence, is to be found in 25 N. Y. Suppl. 744 (*Mitchell* v. *Rochester St. Ry. Co.*, Circuit Court, Monroe County). The plaintiff, a married woman, was about to board one of the defendants' street-cars. A car on the opposite track was driven down the hill towards where the plaintiff stood with such speed that the driver could not check his horses until they had almost run into the plaintiff. She was not actually touched, but the fright and excitement of the occurrence produced unconsciousness. As a result of the shock, the plaintiff suffered a miscarriage, and was ill for a long time. Competent physicians testified that the shock was a sufficient cause for all the physical ailments which followed it. Upon the close of the plaintiff's testimony a nonsuit was granted by the trial court. The Circuit Court set this nonsuit aside, holding that "it would have been competent for the jury, upon the facts which appear, to conclude that the negligence of the defendant was the proximate cause of the injury which befell the plaintiff."

The decision is in accordance with the facts within every man's experience. The testimony of physicians is not necessary to prove that ill-health may result from shock. Why, then, in this and similar cases, should the defendant be excused from liability for the natural and proximate consequences of his negligent act? No satisfactory reason for excusing him has been advanced. It has been said in the Privy Council and in the Supreme Court of Pennsylvania that a judgment for the plaintiff would open a wide field for imaginary complaints. But, as the court says in the present case, "the argument *ab inconvenienti* is never of much force, and least of all when it is invoked to enable one to avoid a necessary legal conclusion."

The analogies of the law seem to point irresistibly towards the allowance of a recovery in cases of nervous shock where the plaintiff has proved resulting physical injury. If the admitted negligence of the defendant had acted on brute rather than human nerves, and had produced fright which resulted approximately in injury to the plaintiff, she could certainly have recovered. If the driver of the defendant's car had driven so negligently as to frighten a horse attached to a buggy in which the plaintiff was sitting, and if the horse had run away and thrown her out, she would have had a clear right against the defendant (*McDonald* v. *Snelling*, 14 Allen, 290). So where a horse was frightened to death by the defendant negligently exploding a fire-cracker between his legs, the owner recovered his value (*Conklin* v. *Thompson*, 29 Barb. 218). Now, if the defendant is liable for injury to the plaintiff which is the mediate result of fright produced in the mind of a brute, why is he not liable for injury which is the immediate result of fright produced in the plaintiff's own mind? The law recognizes that a man's mind and nerves may be as effectually surprised and overpowered as a brute's (*Scott* v. *Shepherd*, 1 Sm. L. C. 480; *Holmes* v. *Mather*, L. R. 10 Ex. 261; *Ricker* v. *Freeman*, 50 N. H. 420). So where a plaintiff has acted to his damage on an impulse of self-preservation arising from a dangerous situation